

**U.S. District Court  
Eastern District of California – Live System (Sacramento)  
CIVIL DOCKET FOR CASE #: 2:21-cv-00007-TLN-KJN**

D.L. Markham, DDS, 401(K) Plan v. Variable Annuity Life Ins. Co., et al.,

Assigned to: District Judge Troy L. Nunley  
Referred to: Magistrate Judge Kendall J. Newman  
Cause: 29:1132 E.R.I.S.A.–Employee Benefits

Date Filed: 01/04/2021  
Date Terminated: 03/25/2022  
Jury Demand: None  
Nature of Suit: 791 Labor: E.R.I.S.A.  
Jurisdiction: Federal Question

**Plaintiff**

**D.L. Markham, DDS, MSD, Inc. 401(K) Plan**

represented by **David F. Crutcher**  
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**Plaintiff**

**D.L. Markham, DDS, MSD, Inc.**  
*as plan administrator*

represented by **David F. Crutcher**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Michael Paul Curtis**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Christopher D. Baker**  
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*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Variable Annuity Life Insurance Company**

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**Defendant**

**VALIC Financial Advisors, Inc.**

represented by **Charan M. Higbee**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**David T. McDowell , PHV**  
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*PRO HAC VICE*  
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**Elizabeth P. Wroblewski , PHV**  
(See above for address)

*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Defendant****VALIC Retirement Services Company**

represented by **Charan M. Higbee**  
 (See above for address)

*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**David T. McDowell , PHV**

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**Elizabeth P. Wroblewski , PHV**

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*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
01/04/2021	<u>1</u>	COMPLAINT against All Defendants by D.L. Markham, DDS, MSD, Inc. 401(K) Plan, D.L. Markham, DDS, MSD, Inc., as plan administrator. Attorney Baker, Christopher D. added. (Filing fee \$ 402, receipt number 0972-9335280) (Attachments: # <u>1</u> Civil Cover Sheet)(Baker, Christopher) (Entered: 01/04/2021)
01/04/2021	<u>2</u>	CIVIL NEW CASE DOCUMENTS ISSUED; (Attachments: # <u>1</u> Consent Form, # <u>2</u> VDRP) (Benson, A.) (Entered: 01/04/2021)
01/04/2021	<u>3</u>	SUMMONS ISSUED as to *The Variable Annuity Life Insurance Company (VALIC), VALIC Financial Advisors, Inc., VALIC Retirement Services Company* with answer to complaint due within *21* days. Attorney *Christopher D. Baker* *Baker Curtis & Schwartz, P.C.* *1 California St., Suite 1250* *San Francisco, CA 94111*. (Benson, A.) (Entered: 01/04/2021)
01/06/2021	<u>4</u>	SUMMONS RETURNED EXECUTED: The Variable Annuity Life Insurance Company (VALIC) served on 1/5/2021, answer due 1/26/2021. (Baker, Christopher) (Entered: 01/06/2021)
01/06/2021	<u>5</u>	SUMMONS RETURNED EXECUTED: VALIC Financial Advisors, Inc. served on 1/5/2021, answer due 1/26/2021. (Baker, Christopher) (Entered: 01/06/2021)
01/06/2021	<u>6</u>	SUMMONS RETURNED EXECUTED: VALIC Retirement Services Company served on 1/5/2021, answer due 1/26/2021. (Baker, Christopher) (Entered: 01/06/2021)
01/19/2021	<u>7</u>	NOTICE OF INTERESTED PARTIES by All Plaintiffs. (Baker, Christopher) (Entered: 01/19/2021)
01/25/2021	<u>8</u>	STIPULATION to Extend Time to Respond to Complaint <u>1</u> by The Variable Annuity Life Insurance Company, VALIC Financial Advisors, Inc., VALIC Retirement Services Company. Attorney Higbee, Charan M. added. (Higbee, Charan) Modified on 1/29/2021 (Reader, L). (Entered: 01/25/2021)
02/02/2021	<u>9</u>	

		NOTICE OF INTERESTED PARTIES by VALIC Financial Advisors, Inc., VALIC Retirement Services Company, Variable Annuity Life Insurance Company. (Higbee, Charan) (Entered: 02/02/2021)
02/03/2021	<u>10</u>	JOINT STATEMENT of Identifying Type of Case: ERISA and Putative Class Action filed by Defendants VALIC Financial Advisors, Inc., VALIC Retirement Services Company, Variable Annuity Life Insurance Company. (Higbee, Charan) (Entered: 02/03/2021)
02/05/2021	<u>11</u>	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by All Defendants for attorney David T. McDowell to appear Pro Hac Vice. (Filing fee \$ 225, receipt number 0972-9401609) (Attachments: # <u>1</u> Certificate of Good Standing)(Higbee, Charan) Modified on 2/8/2021 (Huang, H). (Entered: 02/05/2021)
02/08/2021	<u>12</u>	PRO HAC VICE ORDER signed by District Judge Troy L. Nunley on 2/5/2021 ADDING attorney David T. McDowell, PHV for all Defendants. (Huang, H) (Entered: 02/08/2021)
02/08/2021	<u>13</u>	MINUTE ORDER issued by Courtroom Deputy M. Krueger for District Judge Troy L. Nunley on 2/8/2021: The Court has read and considered the parties' joint statement identifying this case as an ERISA and putative class action. (ECF No. <u>10</u> .) Accordingly, the parties are ordered to submit a proposed amended scheduling order setting forth proposed deadlines for discovery, class certification, and any other relevant dates for this matter within seven (7) days of this Order. (Text Only Entry) (Krueger, M) (Entered: 02/08/2021)
02/16/2021	<u>14</u>	PROPOSED ORDER re Joint Proposed Amended Scheduling Order re Minute Order (ECF No. 13) , by D.L. Markham, DDS, MSD, Inc., D.L. Markham, DDS, MSD, Inc. 401(K) Plan. (Curtis, Michael) Modified on 2/17/2021 (Kastilahn, A). (Entered: 02/16/2021)
02/17/2021	<u>15</u>	AMENDED SCHEDULING ORDER signed by District Judge Troy L. Nunley on 2/17/2021 pursuant to 2/8/2021 Minute Order. (Tupolo, A) (Entered: 02/17/2021)
02/17/2021	<u>16</u>	SECOND STIPULATION and PROPOSED ORDER for Extending Time for Defendants to Respond to Plaintiffs' Complaint by VALIC Financial Advisors, Inc., VALIC Retirement Services Company, Variable Annuity Life Insurance Company. (Higbee, Charan) Modified on 2/18/2021 (Kastilahn, A). (Entered: 02/17/2021)
02/18/2021	<u>17</u>	STIPULATION and ORDER signed by District Judge Troy L. Nunley on 2/17/2021 ORDERING that the VALIC Defendants shall have a second extension to and including 3/1/2021 to answer or otherwise respond to <u>1</u> Complaint. (Huang, H) (Entered: 02/18/2021)
03/01/2021	<u>18</u>	MOTION to CHANGE VENUE by VALIC Financial Advisors, Inc., VALIC Retirement Services Company, Variable Annuity Life Insurance Company. Motion Hearing set for 4/15/2021 at 02:00 PM in Courtroom 2 (TLN) before District Judge Troy L. Nunley. (Attachments: # <u>1</u> Declaration of Eric Levy, # <u>2</u> Points and Authorities, # <u>3</u> Request for Judicial Notice)(Higbee, Charan) Modified on 3/1/2021 (Kaminski, H). (Entered: 03/01/2021)
03/01/2021	<u>19</u>	MOTION to DISMISS by VALIC Financial Advisors, Inc., VALIC Retirement Services Company. Motion Hearing set for 4/15/2021 at 02:00 PM in Courtroom 2 (TLN) before District Judge Troy L. Nunley. (Attachments: # <u>1</u> Points and Authorities, # <u>2</u> Request for Judicial Notice)(McDowell, David) Modified on 3/1/2021 (Kaminski, H). (Entered: 03/01/2021)
03/01/2021	<u>20</u>	MOTION to DISMISS by Variable Annuity Life Insurance Company. Motion Hearing set for 4/15/2021 at 02:00 PM in Courtroom 2 (TLN) before District Judge Troy L. Nunley. (Attachments: # <u>1</u> Declaration of Eric Levy, # <u>2</u> Points and Authorities)(McDowell, David) Modified on 3/2/2021 (Kaminski, H). (Entered: 03/01/2021)
03/26/2021	<u>21</u>	[DISREGARD – FILED IN ERROR] INITIAL DISCLOSURES pursuant to FRCP 26(a)(1) by VALIC Financial Advisors, Inc., VALIC Retirement Services Company, Variable Annuity Life

		Insurance Company. (Higbee, Charan) Modified on 3/26/2021 (Benson, A.). (Entered: 03/26/2021)
04/01/2021	<u>22</u>	OPPOSITION by D.L. Markham, DDS, MSD, Inc., D.L. Markham, DDS, MSD, Inc. 401(K) Plan to <u>18</u> Motion to Change Venue. (Attachments: # <u>1</u> Declaration of Dr. Markham, # <u>2</u> Declaration of Mike Curtis)(Curtis, Michael) (Entered: 04/01/2021)
04/01/2021	<u>23</u>	OPPOSITION by D.L. Markham, DDS, MSD, Inc., D.L. Markham, DDS, MSD, Inc. 401(K) Plan to <u>20</u> Motion to Dismiss. (Attachments: # <u>1</u> Request for Judicial Notice)(Curtis, Michael) (Entered: 04/01/2021)
04/01/2021	<u>24</u>	OPPOSITION by D.L. Markham, DDS, MSD, Inc., D.L. Markham, DDS, MSD, Inc. 401(K) Plan to <u>19</u> Motion to Dismiss. (Crutcher, David) (Entered: 04/01/2021)
04/02/2021	<u>25</u>	MINUTE ORDER issued by Courtroom Deputy M. Krueger for District Judge Troy L. Nunley on 4/2/2021: On the Court's own motion, Defendants' Motion to Change Venue and Motions to Dismiss (ECF Nos. <u>18</u> , <u>19</u> and <u>20</u> ) are hereby SUBMITTED without oral argument. Accordingly, the hearing set for 4/15/2021 is VACATED. If the Court determines oral argument is necessary, it will be scheduled at a later date. Defendants may still file a reply briefs in accordance with Local Rule 230(d) and the 4/15/2021 date. (TEXT ONLY ENTRY) (Krueger, M) (Entered: 04/02/2021)
04/08/2021	<u>26</u>	REPLY by VALIC Financial Advisors, Inc., VALIC Retirement Services Company, Variable Annuity Life Insurance Company re <u>22</u> Opposition to Motion. (Attachments: # <u>1</u> Declaration of Charan M. Higbee, # <u>2</u> Exhibit A)(Higbee, Charan) (Entered: 04/08/2021)
04/08/2021	<u>27</u>	REPLY by VALIC Financial Advisors, Inc., VALIC Retirement Services Company, Variable Annuity Life Insurance Company re <u>23</u> Opposition to Motion. (McDowell, David) (Entered: 04/08/2021)
04/08/2021	<u>28</u>	REPLY by VALIC Financial Advisors, Inc., VALIC Retirement Services Company, Variable Annuity Life Insurance Company re <u>24</u> Opposition to Motion. (McDowell, David) (Entered: 04/08/2021)
02/04/2022	<u>29</u>	MOTION for PROTECTIVE ORDER to Stay Discovery by VALIC Financial Advisors, Inc., VALIC Retirement Services Company, Variable Annuity Life Insurance Company. Motion Hearing set for 2/15/2022 at 09:00 AM in Courtroom 25 (KJN) before Magistrate Judge Kendall J. Newman. (Attachments: # <u>1</u> Joint Statement, # <u>2</u> Declaration of Eric Levy)(McDowell, David) (Entered: 02/04/2022)
02/04/2022	<u>30</u>	DECLARATION of Michael Curtis in opposition to <u>29</u> Motion for Protective Order. (Curtis, Michael) (Entered: 02/04/2022)
02/15/2022	<u>31</u>	MINUTES (Text Only) for proceedings held via video conference (Zoom) before Magistrate Judge Kendall J. Newman: MOTION HEARING held on 2/15/2022. Counsel for parties present. The Court addressed the parties regarding the Defendants' Motion for Protective Order to Stay Discovery (ECF No. <u>29</u> ). After hearing from parties and for reasons stated on the record, the motion was submitted. Order to issue. Plaintiffs' Counsel Michael Curtis and David Crutcher present. Defendants' Counsel Charan Higbee, David McDowell, and Elizabeth Wroblewski (observing) present. Court Reporter: Kimberly Bennett. (Waldrop, A) (Entered: 02/15/2022)
02/16/2022	<u>32</u>	ORDER signed by Magistrate Judge Kendall J. Newman on 2/15/2022 GRANTING <u>29</u> Motion for Protective Order. The parties shall continue discussing their discovery obligations in case the district judge finds some of plaintiffs' claims can move forward, with or without amendment, and after the district judge has ruled on the motions to dismiss, the parties shall file a brief joint statement with the KJN indicating their position. (Reader, L) (Entered: 02/16/2022)
02/16/2022	<u>33</u>	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by VALIC Financial Advisors, Inc., VALIC Retirement Services Company, Variable Annuity Life Insurance Company

		for attorney Elizabeth Wroblewski to appear Pro Hac Vice. (Filing fee \$ 225, receipt number ACAEDC-10080224) (Attachments: # <u>1</u> Exhibit Certificate of Good Standing)(Higbee, Charan) (Entered: 02/16/2022)
02/18/2022	<u>34</u>	PRO HAC VICE ORDER signed by District Judge Troy L. Nunley on 2/17/22 GRANTING <u>33</u> Application for Pro Hac Vice. Added Attorney Elizabeth P. Wroblewski, PHV for VALIC Financial Advisors, Inc., VALIC Retirement Services Company and Variable Annuity Life Insurance Company. The Pro Hac Vice attorney is directed to request electronic filing access through PACER. (Kastilahn, A) (Entered: 02/18/2022)
03/17/2022	<u>35</u>	NOTICE of CHANGE of ADDRESS by Charan M. Higbee. (Higbee, Charan) (Entered: 03/17/2022)
03/25/2022	<u>36</u>	ORDER signed by District Judge Troy L. Nunley on 3/24/2022 GRANTING <u>18</u> Motion to Transfer Venue and DENYING as moot <u>19</u> , <u>20</u> Motions to Dismiss. The Court hereby TRANSFERS the instant action to the U.S. District Court for the Southern District of Texas. CASE TRANSFERRED. (Huang, H) (Entered: 03/25/2022)